

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL HERRON,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:24-cv-00425-MTS
)	
TEARS OF EDEN, <i>et al.</i> ,)	
)	
Defendants.)	

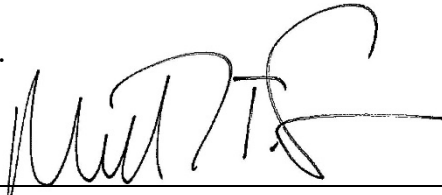
MEMORANDUM AND ORDER

Before the Court, through its subject matter jurisdiction under 28 U.S.C. § 1332(a)(1), is this four-count tort action arising under state law. The action presently is before the Court on Defendants’ Motion to Dismiss, which seeks dismissal of Count II and Count III of Plaintiff’s First Amended Complaint for failure to state a claim upon which relief can be granted. *See* Doc. [77]; *see also* Fed. R. Civ. P. 12(b)(6). After a complete review of the First Amended Complaint, the Motion to Dismiss and Memorandum in Support, and the Memorandum in Opposition to the Motion, and after considering the proper standard of review, the Court concludes that Count II and Count III of Plaintiff’s First Amended Complaint state a plausible claim for relief. *See Lustgraaf v. Behrens*, 619 F.3d 867, 872–73 (8th Cir. 2010) (explaining standard of review on motion to dismiss for failure to state a claim); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (“[A] complaint that states a plausible claim for relief survives a motion to dismiss.”).

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss, Doc. [77], is **DENIED**. All claims within Plaintiff's First Amended Complaint remain.

Dated this 3rd day of December 2024.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE